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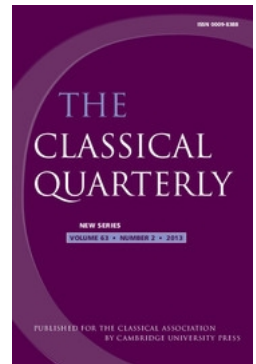
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Eqvester Ordo Tvvs Est: Did Cicero Win His Cases Because of His Support for the Eqvites?

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EQVESTER ORDO TVVS EST: DID CICERO WIN HIS CASES BECAUSE OF HIS SUPPORT FOR THE EQVITES?

We think of Cicero as an oratorical genius, a master of persuasion, and the supremely successful Roman advocate—a man who could, as he himself boasted, throw dust in the eyes of a jury.¹ It is true that he was not quite as invincible as people sometimes imagine: we know of thirty-three acquittals that he secured, but also of nine criminal cases that he lost (naturally, he did not as a rule publish his failures, so it is the successes that stick in the mind). But even so, his reputation for forensic success cannot be taken away from him. His pre-eminence is indicated not just by the number of acquittals, but by the high status² of those who sought his services (not always successfully) and by the political rewards that came to him as a result of his work at the bar.

But his success in the courts did not come exclusively from his powers of persuasion and the brilliance of his oratory: it also came from factors external to the case. Most obviously, his success in any particular case might arise in part from the political situation which prevailed at the time. For instance, he himself tells us that he won the Murena case because, with Catiline in the field, Rome needed to have two consuls in place on 1 January 62 (*Flac.* 98; cf. *Quint. Inst.* 6.1.35). His performance in court (aside from his emphasis of the factor just mentioned) was less important, and in fact Plutarch tells us that on this occasion it fell short of his usual standard (*Plut. Cic.* 35.3). On the other hand, he lost the Milo case partly because the facts were so heavily against him but partly, also, because Pompey wanted Milo convicted.³ In this paper I should like to consider a further external factor that may have been important in determining Cicero's success, but has not apparently been recognized as such: his support for the *equites*.

It will not be necessary for our purposes to enter into the much debated question of the definition of the *equites*;⁴ but it may be advisable to consider for a moment whether it is meaningful to talk in this way of 'the *equites*' as a group. Clearly, if the *equites* had nothing whatsoever in common except receipt of the public horse or possession of a

A shorter version of this paper was given at the Oxford Triennial conference in July 2001. I am grateful to my audience there and to *CQ*'s anonymous referee for comments, to Professor Francis Cairns for helpful discussion, and to Professor Michael Crawford for a copy of a review in advance of publication. Agreement should by no means be assumed. The quotation in the title is from *Q. Cic. (?) Pet.* 33.

¹ *Quint. Inst.* 2.17.21 *Cicero . . . se tenebras offudisse iudicibus in causa Cluenti gloriatus est.*

² Cf. *Pet.* 2 *non potest qui dignus habetur patronus consularium indignus consulatu putari.*

³ See *Asc. Mil. passim*, esp. 36, 38, 53 C; D. H. Berry, *Cicero: Defence Speeches* (Oxford, 2000), 162–71.

⁴ Cf. M. I. Henderson, *JRS* 53 (1963), 61–72; C. Nicolet, *L'Ordre équestre à l'époque républicaine (312–43 av. J.-C.)* (2 vols, Paris, 1966–74), esp. 1.163–76, with the review by J. Linderski, *CP* 72 (1977), 55–60; T. P. Wiseman, *Historia* 19 (1970), 67–83; E. Badian, *Publicans and Sinners: Private Enterprise in the Service of the Roman Republic* (Ithaca and London, 1983²), 82–5, 144–5, with the review by T. P. Wiseman, *Phoenix* 27 (1973), 189–98; J.-L. Ferrary, *REL* 58 (1980), 313–37; P. A. Brunt, *The Fall of the Roman Republic and Related Essays* (Oxford, 1988), 144–93; J. Bleicken, *Cicero und die Ritter* (Göttingen, 1995), with the review by M. H. Crawford, *CR* 51 (2001), 431–3.

minimum of 400,000 sesterces, it might not mean very much to say that Cicero supported them. I argue, however, that it does make sense to say that Cicero supported the *equites* and had a meaningful relationship with that order: he refers to the *equites* as a group so often that the concept must have made sense to his audience, even if it is the case that he may have exaggerated the solidarity of the group for his own persuasive purposes. It is certainly true that the *equites* consisted of several different types of people, principally Italian landowners and the *publicani*, who need not necessarily have identified with each other all of the time and whose interests did not necessarily always coincide. But they were all by definition wealthy, they all by definition fell short of senatorial status, they all had a certain standing in society, and they served together on juries as a single, legally defined group, in opposition to senators. These factors must have given them, whatever their individual circumstances, a degree of common identity and interest—and this is of course the impression given throughout the writings of Cicero. In any case, landowners and *publicani* were not so unrelated as might be supposed: many of the former held shares in the public companies (*societates*), while many or all equestrian *publicani* would have owned land (even if it was not their primary concern).⁵ It may be that scholars were once too prone to view the *equites* as a monolithic block, ignoring the diversity that existed within the order; but it would be wrong now to swing as far in the other direction and claim that the *equites* had little or nothing in common beyond conformity to a formal definition. By the time of Cicero's maturity about half a century had elapsed since the moment when C. Gracchus had given the *equites* control of the courts, thereby helping to establish them as a distinct class. Over that half century the role they played in public life and in society, and particularly their political interactions with the senate, had brought about a common identity so effectively that Cicero—and, by implication, his audiences—simply take it for granted.

I shall therefore proceed without further ado to consider Cicero's support for the *equites*, and the support he received from them. In the first part of this paper I will review his relationship with the *equites*, seeing what it amounted to and considering what effect it might have had on a jury, irrespective of the actual content of his speeches. I will then look at some of the speeches and consider the way he treats the *equites*, both those he is addressing in court and the *equites* at large. The argument will point to the evident importance of the *equites* as a factor in Cicero's forensic success.

From 70 B.C., Cicero's forensic speeches were given before juries which normally consisted of one-third senators, one-third *equites*, and one-third *tribuni aerarii*. It is not clear precisely what the *tribuni aerarii* were, but Cicero treats them as *equites*,⁶ and for most purposes it is fair to view the juries as consisting of one-third senators and two-thirds *equites*. Caesar in 46 excluded the *tribuni aerarii* from the juries, so that the juries then became half senators and half *equites*. But this is after the period of Cicero's forensic activity: for Cicero's period, from 70, the juries were heavily weighted in favour of the *equites*. Cicero, then, was very often defending men of the highest social status, but he was defending them before men who did not aspire to such status themselves, and who came in fact from precisely the same class and background as that from which he himself had arisen.

Like his fellow-townsmen and distant relation C. Marius, Cicero came from a municipal equestrian family, and in many of his works, not just the forensic speeches,

⁵ Cf. Wiseman (n. 4, 1973), 196–7.

⁶ Brunt (n. 4), 210–11.

he makes much of this.⁷ This frequent reference to his equestrian origin did not serve only to emphasize the distance he had travelled and hence the scale of his achievement: it helped to remind his equestrian audiences that, though he was now a senator, he did not forget the people from whom he had come. Indeed, Cicero is always at pains to stress the closeness of his ties to the equestrian order, and to present himself as their champion and ally. Throughout his career he made great efforts to support their interests, even when he considered their demands unreasonable (such as over the requested cancellation of the Asiatic tax contract in 61). It is true that others, too, cultivated the *equites*—one thinks first of all of Crassus—but there are likely to have been few senators who developed such a sincere and long-lasting relationship with that order as Cicero did, and none besides Cicero who in addition had actually arisen out of it.⁸

An account of Cicero's relationship with the *equites* would amount to a history of his entire career, so all I propose to do here is to pick out some moments in his career which illustrate that relationship. Clearly it would be invalid to use the speeches addressed to predominantly equestrian audiences as evidence for a close relationship with the *equites*; such speeches will therefore be omitted from consideration until the second part of his paper. If, on the other hand, Cicero can be found to show partiality towards the *equites* before a senatorial or popular audience, then the objection that his views have been tailored to suit his audience will not necessarily apply.

First, then, his defence of Sex. Roscius of Ameria in 80. This is a highly atypical case. The normal scenario is for Cicero, a senator, to be defending a fellow senator before a predominantly equestrian jury. Here, however, Cicero, an *eques*, defends a fellow *eques* before a senatorial jury.⁹ Obviously he is not in this speech free to take the side of the *equites* against the senate. But he does at one point allow his sympathy with the *equites* to show through. At §139 he warns the senators that if they do not dissociate themselves from supporters of Sulla such as Chrysogonus, then control of the courts will be returned to the *equites*; and at §140 he adds *videant ne turpe miserumque sit eos qui equestrem splendorem pati non potuerunt servi nequissimi dominationem ferre posse*.¹⁰ Of course, it may be in Cicero's interest, even though he is addressing senators, to take the side of the *equites* in order to make a threat; but the bitterness of the irony in his words *qui equestrem splendorem pati non potuerunt* may nevertheless be taken to indicate a genuine sympathy with the wounded *dignitas* of the *equites*.

Ten years later, in his prosecution of Verres, Cicero, now a senator, once again warns a senatorial jury that it is on probation. At the beginning of the *actio prima* he bluntly tells the jury that senatorial juries are generally considered to be corrupt, and unless they reject Verres' bribes and find him guilty they will have no hope of retaining their exclusive right to sit on juries (*Verr.* 1.1–3). Then from §34 to the end, he is even more outspoken, lecturing the senators on their *intolerabilis potentia*, their *cupiditas*, and their *dominatio regnumque iudiciorum* (§35). At §38 he says:

⁷ H. Hill, *The Roman Middle Class in the Republican Period* (Oxford, 1952), 163, n. 1; T. N. Mitchell, *Cicero: The Ascending Years* (New Haven and London, 1979), 2, n. 2. On Cicero and Marius, see D. H. Berry on *Sul.* 23.3.

⁸ Cf. *Phil.* 6.13 *sed haec una statua. altera <ab> equitibus Romanis equo publico: qui item ascribunt, 'patrono'. quem umquam iste ordo patronum adoptavit? si quemquam, debuit me.*

⁹ For Roscius' equestrian status, see *S. Rosc.* 144.

¹⁰ Note that Cicero often uses the term *splendor* (also *splendidus*) in a technical sense, as here, to denote a quality possessed by leading *equites*, just as *clarissimus* is used to refer to a prominent senator; cf. Nicolet (n. 4), 1.213–24. See *Mur.* 40, *Cael.* 3, and *Planc.* 32, quoted below.

cognoscet ex me populus Romanus quid sit quam ob rem, cum equester ordo iudicaret, annos prope quinquaginta continuos <in> nullo, iudices, equite Romano iudicante ne tenuissima quidem suspicio acceptae pecuniae ob rem iudicandam constituta sit; quid sit quod, iudiciis ad senatorium ordinem translatis sublataque populi Romani in unum quemque vestrum potestate, Q. Calidius damnatus dixerit minoris HS triciens praetorium hominem honeste non posse damnari . . .

Here Cicero's threatening of the senators assists his case more obviously than in *Pro Roscio*; but even so, he does seem to be nailing his colours to the mast in his support for equestrian juries. No doubt he sensed that exclusively senatorial juries were in any case likely to be abolished, and he wished to go on record as having supported those who would benefit—the equestrian jurors of the future, whom henceforward he would be addressing when he appeared in court. When the *lex Aurelia* came, however, it did not in fact replace the senatorial monopoly of the courts with an equestrian one. Instead it enacted a compromise, although one which did give the *equites* a two-thirds majority—enough to be decisive.

Moving on now to the 60s, we come to the *lex Manilia* and then to Cicero's attainment of the consulship. In speaking in favour of the *lex Manilia* (66 B.C.), Cicero was advocating a bill that was vital to equestrian interests: the *publicani* needed to have Asia brought safely back under Roman control so that it could again provide the taxes they farmed. At the beginning of his speech Cicero explains that in supporting the bill he is acting on behalf of the *publicani* (§4), and that they have approached him because of his close ties with the equestrian order:

equitibus Romanis, honestissimis viris, adferuntur ex Asia cottidie litterae, quorum magnae res aguntur in vestris vectigalibus exercendis occupatae; qui ad me pro necessitudine quae mihi est cum illo ordine causam rei publicae periculaque rerum suarum detulerunt.

Later in the speech he discusses the damage that even the threat of war does to revenues and tax collecting (§§15–16), and he argues that the interests of the *publicani* are inextricably linked with those of the Roman people (§§17–19). Of course, he is clearly speaking in this speech with an eye to winning the support of the *equites* (among others) for his campaign for the consulship. Yet the close relations he enjoyed with the *publicani* at this period are fairly well documented,¹¹ and it is very doubtful whether he could have spoken of his relations with the *equites* in these terms if the reality was significantly different.

In the event, the *equites* gave Cicero their strong backing in his campaign. The *Commentariolum petitionis* gives a list of those whom he could count on to support him:

deinde <fac> ut amicorum et multitudo et genera appareant; habes enim ea quae <non multi homines> novi habuerunt: omnis publicanos, totum fere equestrem ordinem, multa propria municipia, multos abs te defensos homines cuiusque ordinis, aliquot collegia, praeterea studio dicendi conciliatos plurimos adulescentulos, cottidianam amicorum adsiduitatem et frequentiam.

(§3)

The support of the *equites* for Cicero is also commented on at §§33 (*equester ordo tuus est*), 50 (a similar passage to the one just quoted), and 55.

After becoming consul, Cicero maintained his support for the *equites*, and they maintained their support for him. His support for them was strikingly manifested on

¹¹ See Mitchell (n. 7), 100–1 (Mitchell cites Cicero's defences of C. Mustius, M. Fonteius, and P. Oppius); cf. 101–5 on his relations with the leading men of the Italian *municipia*.

one memorable occasion (Plut. *Cic.* 13.2–4). L. Roscius Otho had been the author in 67 of the *lex Roscia theatralis* which reserved the first fourteen rows in the theatre for the *equites*, and he was probably now a praetor. One day during Cicero's consulship (we do not know when) Roscius was hissed in the theatre, causing the *equites* to rally to his defence. Disorder broke out, and Cicero, summoning a public meeting, reprimanded the people so effectively that on their return to the theatre Roscius was received with applause. The speech in which Cicero achieved this remarkable turn-around is lost (except for one unrevealing fragment),¹² but it is obvious that he must have lectured the people on the dignity of the equestrian order—in the same way, perhaps, as he lectured them in *Pro lege Manilia* on the importance of the *publicani*.

The support of the *equites* for Cicero, on the other hand, was revealed during the Catilinarian conspiracy. Since many of the *equites* were moneylenders, and Catiline was proposing a cancellation of debts, the *equites* were violently opposed to him and completely supportive of Cicero's resolute stance against him. Cicero's speeches are full of references to the loyalty of the *equites* during the Catilinarian crisis; we learn, for instance, that they surrounded the senate during the meeting at which Cicero delivered his *First Catilinarian* (*Cat.* 1.21). They did the same during the debate on 5 December, apparently under the leadership of Cicero's friend Atticus,¹³ and they threatened Caesar with swords when he came out of the temple after proposing imprisonment instead of execution for the captured conspirators.¹⁴ The unanimity of feeling among the senators, *equites* and people following the executions seemed to Cicero a realisation of his cherished *concordia ordinum*.¹⁵

Cicero's suppression of the conspiracy sealed his relationship with the *equites*. In late 60 or early 59 he wrote a long public letter to his brother Quintus, now starting his third year as governor of Asia, advising him on how to govern a province (a subject on which Quintus' knowledge must in fact have contrasted with Cicero's own). Cicero tells his brother:

constat enim ea provincia primum ex eo genere sociorum quod est ex hominum omni genere humanissimum, deinde ex eo genere civium qui aut quod publicani sunt nos summa necessitudine attingunt aut quod ita negotiantur ut locupletes sint nostri consulatus beneficio se incolumis fortunas habere arbitrantur. (*QFr.* 1.1.6)

Clearly the businessmen considered that they owed Cicero a debt of gratitude. In governing Asia, Quintus faced the typical dilemma of provincial governors in the late republic—how to be fair to the provincials without giving offence to the *publicani*, something that could potentially result in one being prosecuted for extortion on one's return to Rome. The dilemma is spelt out by Cicero at §32:

atque huic tuae voluntati ac diligentiae difficultatem magnam adferunt publicani. quibus si adversamur, ordinem de nobis optime meritum et per nos cum re publica coniunctum et a nobis et a re publica diiungemus; sin autem omnibus in rebus obsequemur, funditus eos perire patiemur quorum non modo saluti sed etiam commodis consulere debemus. haec est una, si vere cogitare volumus, in toto imperio tuo difficultas.

It was actually an awkward time to be governor of Asia, because the senate had not

¹² J. W. Crawford, *M. Tullius Cicero: The Fragmentary Speeches* (Atlanta, 1994²), 209–14.

¹³ *Red. Sen.* 12, 32; *Sest.* 28; *Phil.* 2.16, 2.19; *Att.* 2.1.7 (Atticus their leader); *Sal. Cat.* 49.4; *Suet. Jul.* 14.2.

¹⁴ *Sal. Cat.* 49.4; *Suet. Jul.* 14.2; *Plut. Caes.* 8.2 (cf. *Cic.* 21.4).

¹⁵ *Cat.* 4.15, 4.22; *Flac.* 96; *Pis.* 7; *Phil.* 2.19.

acceded to the request made by the *publicani* in 61 for the cancellation of their contract, and the *publicani* therefore had little option but to oppress the Asian provincials in order to minimize their loss. Quintus took the side of the provincials, and Cicero considered that his brother, who had a short temper, was unnecessarily rude and aggressive towards the *publicani*. He was even afraid that they would prosecute Quintus on his return.¹⁶ It is perhaps a sign of the good relations that he himself had with them that this alarming prospect never materialized. They could hardly attack, through his brother, the man who had put a stop to Catiline, and to whose consulship they owed the preservation of their wealth.

Indeed, when Cicero was threatened with exile for the executions, the *equites* were quick to rally to his defence. They assembled on the Capitol and resolved to put on mourning. Then they went to where the senate was meeting and asked for its help, whereupon the senate too decreed that mourning should be worn. The *municipia* of Italy and the public companies passed numerous resolutions in Cicero's support, and the *equites* kept up the pressure on the magistrates and senate. The consuls Piso and Gabinius, however, supported Clodius against Cicero: Gabinius warned the *equites* they would pay for their support of Cicero at the time of the executions and he issued a proclamation of banishment against one of Cicero's leading equestrian supporters, L. Aelius Lamia. Both consuls then directed the senate to resume normal dress.¹⁷ When Cicero finally went into exile he was helped by his equestrian friends: C. Rabirius Postumus (who will be discussed below) lent him money (*Rab. Post.* 47) and Atticus handled his business affairs for him.

So far I have been picking out moments in Cicero's career that best illustrate his relationship with the *equites*. The last such moment I will choose is his governorship of Cilicia in 51–50 B.C., where he was faced with the same dilemma that Quintus had faced in Asia, that of reconciling the interests of the provincials with those of the *publicani*. The desire to win the reputation of a model governor (all the more important in view of his prosecution of Verres in 70, his presidency of the extortion court in 66, and his public letter to Quintus in 60–59; cf. *Rab. Post.* 9), coupled with his natural sense of justice, prompted Cicero to seek to protect the provincials from the *publicani*; and yet it was clearly necessary for him at the very least not to obstruct the interests of the equestrian class to which he owed so much. The Romans at this period were worried that, as a result of the defeat at Carrhae in 53, the Parthians would overrun the eastern provinces, and care seems to have been taken to select governors who could be relied upon to act in a way likely to retain the loyalty of the provincials. In Cilicia, therefore, the rapacious App. Claudius Pulcher was replaced by Cicero, and in Syria M. Calpurnius Bibulus was appointed. Both men tried to protect the provincials from exploitation. Bibulus managed to offend the *publicani* in his provincial edict (*Att.* 6.1.15),¹⁸ but Cicero fared better, and succeeded (miraculously) in leaving all parties reasonably satisfied. He did this partly by skilful financial management (for example, he quietly compelled the local officials to return the money they had embezzled over the years, and gave it to the provincials so they could pay off their debts to the *publicani*, *Att.* 6.2.5) and partly by tact and diplomacy. He explained the latter point to Atticus:

¹⁶ *Att.* 3.8.3, 3.9.1–3, 3.13.2, 3.17.1, 3.19.3; *QFr.* 1.3.8.

¹⁷ T. N. Mitchell, *Cicero: The Senior Statesman* (New Haven and London, 1991), 134–5. These events are related in detail in *Pro Sestio*.

¹⁸ Explained by Badian (n. 4), 115, 156, n.158.

de publicanis quid agam videris quaerere. habeo in deliciis, obsequor, verbis laudo, orno: efficio ne cui molesti sint . . . quid plura? sunt omnes ita mihi familiares ut se quisque maxime putet.

(*Att.* 6.1.16)

We have two letters written by him during his governorship¹⁹ to officials in Bithynia²⁰ in which he recommends individual *publicani* and *societates* to them. One is written to the governor (*Fam.* 13.65), another to a quaestor (*Fam.* 13.9). These letters give a glimpse of the activity which Cicero was constantly engaged in in the service of his equestrian friends, and demonstrate the closeness of his relationship with them. A quotation will give a flavour of these letters:

volo enim te existimare me, cum universo ordini publicanorum semper libentissime tribuerim idque magnis eius ordinis erga me meritis facere debuerim, tum in primis amicum esse huic Bithynicae societati, quae societas [ordine] ipso hominum genere pars est maxima civitatis (constat enim ex ceteris societatibus); et casu permulti sunt in ea societate valde mihi familiares . . . id cum mihi gratissimum feceris tum illud tibi expertus promitto et spondeo, te socios Bithyniae, si iis commodaris, memores esse et gratos cogniturum. (*Fam.* 13.9.2–3)

We have now reviewed Cicero's relationship with the *equites*. It was what we might call a 'special relationship'. Cicero had a very wide network of friends among the equestrian order: he went to great lengths to cultivate their friendship, and to do whatever was possible, within reason, to promote their interests—particularly their financial interests. In return, he received invaluable support from them, in his rise to the consulship (which would have been impossible without their backing), in his suppression of the Catilinarian conspiracy, before and during his exile, during his governorship, and at other times. The relationship was mutually beneficial, and, as well as mere co-operation, there seems to have been liking, trust, and understanding on both sides. Many of Cicero's friendships with the more blue-blooded senators were not genuine friendships: he did not trust Hortensius, for example, and there is a note of desperation in his letters as he repeatedly pledges his friendship to App. Claudius Pulcher and other aristocrats who were petulant or disdainful in their attitude towards him. He was happier when dealing with *equites* or with *novi homines* or men from senatorial families not recently distinguished. His greatest friend, of course, was T. Pomponius Atticus. For the *equites*, on the other hand, it must have been refreshing to be dealing with a senior senator who did not treat them with arrogance, and who did not assume an air of superiority.²¹ They knew that Cicero was one of their kind. He was their man, and they were his people—Cicero's very own equestrians (*equites Romani illi, illi . . . tui*), as Milo is made to declare in the peroration of *Pro Milone* (§94).

This, then, is the context in which we must place Cicero's court cases (from 70 B.C.). From what we have seen, it seems safe to assume that the *equites* in the juries must have been generally speaking well disposed towards Cicero. They knew him, liked him, trusted his instincts and had given him their political support—as he had given them his support in business matters and also, of course, in many of the court cases he had undertaken. In the second part of this paper I will now look briefly at some of the speeches that Cicero delivered before juries with equestrian majorities, to consider the way he treats the *equites*, both those he is addressing in court and the *equites* at large.

First, then, *Pro Fonteio*. The trial took place in 69, the year after *In Verrem* and the

¹⁹ Although the date of *Fam.* 13.9 is doubtful.

²⁰ Cf. B. F. Harris, *ANRW* 2.7.2 (1980), 870–4.

²¹ Cf. Badian (n. 4), 115; Brunt (n. 4), 155.

replacement of senatorial juries by juries with an equestrian majority. Once again a provincial governor, M. Fonteius, is on trial for extortion, but this time Cicero is in the more normal role of counsel for the defence. Fonteius had been governor of Transalpine Gaul for three years in the later 70s; during his governorship he had fallen foul of the provincials but kept in with the *publicani*, who gave him strong support at his trial. Cicero makes the most of this support (§32 *omnes equites Romani qui in illa provincia fuerunt, omnes negotiatores eius provinciae . . . M. Fonteium incolumem esse cupiant*; §46 *omnes illius provinciae publicani . . . ceteri negotiatores uno animo M. Fonteium atque una voce defendunt*), but he also singles out the *equites* for comment at §26 where he praises the exclusively equestrian juries of the pre-Sullan era:

an vero illi equites Romani quos nos vidimus, qui nuper in re publica iudiciisque maxime floruerunt, habuerunt tantum animi, tantum roboris ut L. <Crasso, M.> Scauro testi non crederent; vos Volcarum atque Allobrogum testimoniis non credere timetis?

Cicero is here urging the *equites* among the jurors to have the courage to act as their pre-Sullan predecessors had done, that is vote as they please regardless of the evidence presented to them. It is perhaps a little surprising that he should express nostalgia for the equestrian juries in front of a jury which was, after all, one-third senatorial;²² but what we are seeing here is the continuation of the pro-equestrian and (by implication) anti-senatorial attitude which we noticed earlier in *In Verrem*. Cicero had gone on record then as being a supporter of equestrian juries, and this gives him in the present trial a special claim on the equestrian members of the jury. We do not know the verdict on Fonteius, but it is hard to imagine the equestrian majority convicting a man who enjoyed such support from their order.²³

Second, *Pro Cluentio*, a defence of an *eques* from Larinum in Samnium, A. Cluentius Habitus, in 66. The trial was held under the *lex Cornelia de sicariis et veneficis*, the Sullan murder law.²⁴ The legal part of Cicero's defence consists of the argument that the clause under which Cluentius is accused applies only to senators, and that Cluentius is therefore not liable (§§143–60). This is accompanied by a spirited defence of the rights of the *equites* (§§150–5): *equites* do not enjoy the same privileges as senators, and so it is right that the strict laws which apply to the latter should not apply to them. Indeed, he continues, this trial is nothing other than an attempt to extend the laws to which senators are liable to cover equestrian jurors too:

nec nunc quicquam agitur . . . nisi ut equites Romani in huiusce legis periculum concludantur . . . ei [sc. senatores] qui sese volunt posse omnia neque praeterea quicquam esse aut in homine ullo aut in ordine, hoc uno metu se putant equites Romanos in potestatem suam redacturos, si constitutum sit ut de eis qui rem iudicarint huiusce modi iudicia fieri possint. vident enim auctoritatem huius ordinis confirmari, vident iudicia comprobari; hoc metu proposito evellere se aculeum severitatis vestrae posse confidunt. (§152)

Cicero wishes to warn the *equites* that convicting his client would create a precedent that could be used against themselves, exposing them to the danger of prosecution. But his feelings on this matter are not impartial: the language and tone very obviously show him to be taking the side of the equestrian majority against the senatorial minority (although of course he exempts the senators on the jury from his

²² He expresses similar sentiments at *Rab. Perd.* 20, but that speech was delivered *ad Quirites*.

²³ Cicero's publication of the speech is also a factor which strongly implies an acquittal.

²⁴ See J.-L. Ferrary, *Athenaeum* 79 (1991), 417–34; M. H. Crawford (ed.), *Roman Statutes*, BICS Suppl. 64 (London, 1996), 2.749–53.

criticisms). As in *Pro Fonteio*, he wishes to express his support for the *equites*, to establish a solidarity with them, so that they will reciprocate by acquitting his client—which of course they did, despite the weakness of Cluentius' case.

Third, *Pro Murena*. L. Licinius Murena was the consul-elect for 62 whose acquittal on an *ambitus* charge Cicero secured in late November 63, in the midst of the Catilinarian crisis. Cicero undertook his defence largely because he viewed it as essential that there should be two consuls in place on 1 January to defend Rome against Catiline (§§4–5, 79–82);²⁵ and, as we have noted, the jury took the same view. But Murena was also from a municipal family that, while nevertheless being senatorial, had never produced a Roman consul: his position was not dissimilar to that of the *novi homines* whom Cicero always wished to encourage. Moreover, the *equites* supported Murena. His background resembled their own, and he had helped the *publicani* while governor of Fonteius' province, Transalpine Gaul, in 64–63 (§§42, 69, 89). In defending Murena, therefore, Cicero was not merely helping to ensure the safety of Rome from Catiline—something which, as we have seen, was earnestly desired by the *equites*: he was defending a man whom they would have viewed as one of their own. It is noteworthy that Crassus, the friend of the *publicani*, also spoke in Murena's defence.

In his speech, Cicero makes a number of remarks designed to appeal to the equestrian majority in the jury. First, §§15–18. The prosecutor, the patrician Ser. Sulpicius Rufus, has maintained that he should have won the consulship in preference to Murena because, among other reasons, his family was better than Murena's. This argument, delivered before a predominantly equestrian jury, was a gift to Cicero, allowing him to speak in defence of those who, like the equestrian jurors, were not from the most aristocratic families:

quamquam ego iam putabam, iudices, multis viris fortibus ne ignobilitas generis obiceretur meo labore esse perfectum . . . cum vero ego tanto intervallo claustra ista nobilitatis refregissem, ut aditus ad consulatum posthac, sicut apud maiores nostros fuit, non magis nobilitati quam virtuti pateret, non arbitrabar, cum ex familia vetere et inlustri consul designatus ab equitis Romani filio consule defenderetur, de generis novitate accusatores esse dicturos. (§17)

Murena and Cicero himself are the same sort of men as the *equites* on the jury; Sulpicius is the snobbish patrician.²⁶ The jury are thus encouraged to identify with Murena and take his side. Cicero's other remarks appealing to the *equites* in this speech are briefer, and I will mention two. At §40 he expresses warm approval of the *lex Roscia theatralis*:

L. Otho, vir fortis, meus necessarius, equestri ordini restituit non solum dignitatem sed etiam voluptatem. itaque lex haec quae ad ludos pertinet est omnium gratissima, quod honestissimo ordini cum splendore fructus quoque iucunditatis est restitutus.

The *lex Roscia* is in fact quite irrelevant to the point Cicero is making (that the masses are more likely to vote for candidates if they have put on games); but it helps Cicero to connect with the equestrian jurors. Finally, at §62 he makes a reference to the prosecutor Cato's opposition to the *publicani*:

hoc homo ingeniosissimus, M. Cato, auctoribus eruditissimis inductus adripuit, neque

²⁵ On Cicero's motives for undertaking the defence, see Berry (n. 3), 64–5.

²⁶ Cf. Cicero's similar treatment of the patrician L. Manlius Torquatus at *Sul.* 23–5 (23 *non possunt omnes esse patricii—si verum quaeris, ne curant quidem—nec se aequales tui propter istam causam abs te anteiri putant*).

disputandi causa, ut magna pars, sed ita vivendi. petunt aliquid publicani; cave <ne> quicquam habeat momenti gratia.

The point is ostensibly introduced merely to illustrate the inflexibility of Cato's Stoic principles. But it is more valuable as a reminder to the equestrian jurors to have thought for who their friends are.

Fourth, *Pro Caelio* of 56 B.C. In this speech, the most interesting figure for our purposes is the defendant's father. The defendant, M. Caelius Rufus, accused of *vis* on a number of counts, had in all probability recently entered the senate as a *novus homo*. A young and fashionable socialite and a big spender, he had moved out of his father's house and rented an apartment on the Palatine from Clodius, and had then embarked upon a sexual relationship with Clodius' sister, Clodia Metelli. His father, on the other hand, was an elderly *eques*, careful with money (§36 *parco ac tenaci*), who lived a long way from the forum and shunned society. This is the figure with whom Cicero chooses to begin and end his speech. In §§3–4 he replies to the first of a number of minor accusations which had nothing to do with *vis* but which the prosecution had brought up in an attempt to prejudice the jury against Caelius:

objectus est pater varie, quod aut parum splendidus ipse aut parum pie tractatus a filio diceretur. de dignitate M. Caelius notis ac maioribus natu etiam sine mea oratione tacitus facile ipse respondet; quibus autem propter senectutem, quod iam diu minus in foro nobiscumque versatur, non aequae est cognitio, hi sic habeant, quaecumque in equite Romano dignitas esse possit, quae certe potest esse maxima, eam semper in M. Caelio habitam esse summam hodieque haberi non solum a suis sed etiam ab omnibus quibus potuerit aliqua de causa esse notus. equitis autem Romani esse filium criminis loco poni ab accusatoribus neque his iudicantibus oportuit neque defendentibus nobis.

The nature of the prosecution's criticism of the elder Caelius is a little unclear. It seems unlikely that they could have criticised him for falling below the equestrian property qualification since Cicero tells us in §73 that he had business interests and property in Africa. Perhaps, then, they simply claimed or implied that his style of life was shabby and that he had become an embarrassment to the equestrian order. In defending him, Cicero takes a high moral tone, and there are in fact very few people in the speeches of whom he speaks with such extreme respect. His deference is in part the deference due to age, certainly, but it is also in large measure the deference due to an *eques*, and the passage is perhaps the strongest expression that we have of the *dignitas* of the equestrian order. Brunt and Badian have pointed out how the *equites* had a powerful sense of their *dignitas*, and the *equites* could indeed be a little touchy on this point, as Bibulus found to his cost.²⁷ Cicero therefore says, very respectfully, that the elder Caelius' *dignitas* is such that he can rebut the charge made against him in silence, merely, we infer, by his impressive countenance and appearance. In other words, you would only have to look at him to see that he is, in truth, *splendidus*. After Cicero has lingered for a while on the very great distinction that a Roman equestrian may possess, he concludes his argument by deftly and abruptly turning the prosecution's criticism of the elder Caelius into a general criticism of all *equites*—something potentially extremely damaging to their case. The closing words of the passage create a polarity between the Caelii, the equestrian members of the jury, and Cicero on the one hand—all *equites*, actually or in origin—and the prosecutor Atratinus on the other. The technique is exactly that which we saw used against the patrician Sulpicius in *Pro Murena*.

²⁷ Badian (n. 4), 115; Brunt (n. 4), 154. Bibulus: see n. 18 above.

At the very end of the speech (§§79–80) Cicero returns to Caelius' father in a typical *miseratio*. His aim is, perhaps, not merely to evoke pity for the old man whose life would be destroyed by his son's conviction, but also to remind the jurors of the solidarity among *equites* that he appealed to at the beginning. This solidarity is taken further in the last sentence of the speech with a personal pledge:

quem si nobis, si suis, si rei publicae conservatis, addictum, deditum, obstrictum vobis ac liberis vestris habebitis omniumque huius nervorum ac laborum vos potissimum, iudices, fructus uberes diuturnosque capietis. (§80)

Caelius was acquitted.

Fifth, *Pro Plancio*. Cn. Plancius, like Murena, was accused of *ambitus*: he had allegedly used bribery in his campaign for the curule aedileship (probably of 55; *MRR* 3.158), and was prosecuted by his unsuccessful rival M. Iuventius Laterensis in 54. But whereas Murena was from a senatorial family that had never produced a consul, Plancius was (like Cicero) a *novus homo* whose background was exclusively equestrian, and who was in addition the son of a leading *publicanus* (§24 *princeps . . . publicanorum*): the father was the spokesman of the *publicani* of Asia who in 61 had requested the cancellation of their tax contract. Plancius was therefore someone particularly likely to appeal to the equestrian majority in the jury, and Cicero addresses the fact of his client's equestrian origin at some length.

Laterensis, of course, had maintained that, as a *nobilis* (his family had been consular since M'. Iuventius Thalna in 163 B.C.), he was the one who in the normal course of events should have won the election. This allows Cicero once again to speak in defence of those who, like the equestrian jurors, do not come from the most aristocratic families. It is perfectly natural, he says (§17), that the people should have elected a man of equestrian origin, just as they did in his own case. Moreover, Laterensis comes from Tusculum where consuls are two-a-penny and the voters make no special effort on behalf of their fellow-townsmen who are standing for public office; Plancius comes from Atina, on the other hand, where the mere fact that he is standing for office at Rome makes him a celebrity throughout the region, and inspires the strongest support (§§19–22). The support of the municipal *equites*, and even of the rarely mentioned *tribuni aerarii*, is emphasized (§21; cf. 22): *Hi tot equites Romani, tot tribuni aerarii . . . quid roboris, quid dignitatis huius petitioni attulerunt?* Cicero then progresses naturally from the municipal *equites* to the *publicani*, highlighting the fact that Plancius' father is a *publicanus*:

adiungam si vis id quod tu huic obesse etiam putas, patrem publicanum. qui ordo quanto adiumento sit in honore quis nescit? flos enim equitum Romanorum, ornamentum civitatis, firmamentum rei publicae publicanorum ordine continetur. quis est igitur qui neget ordinis eius studium fuisse in honore Planci singulare? neque iniuria, vel quod erat pater is qui est princeps iam diu publicanorum . . . vel quod huius ipsius in illum ordinem summa officia quaesturae tribunatusque constabant, vel quod illi in hoc ornando ordinem se ornare et consulere liberis suis arbitrabantur. (§§23–4)

The equestrian order, Cicero explains, helps its own, and benefits from so doing. The implication is that the jury should now act, and benefit, in the same way.

Later in the speech Cicero, as in *Pro Caelio*, responds to a specific objection raised against the defendant's father: the elder Plancius had made some outspoken remarks against the senate when it had failed to accede to his request for the cancellation of the Asiatic tax contract (§§31–5). But this is not a difficult problem for Cicero, given the

composition of the jury. He begins his reply with a recital of the father's virtues as an equestrian:

sed cum sit Cn. Plancius is eques Romanus, ea primum vetustate equestris nominis, ut pater, ut avus, ut maiores eius omnes equites Romani fuerint, summum in praefectura florentissima gradum tenuerint et dignitatis et gratiae, deinde ut ipse in legionibus P. Crassi imperatoris inter ornatissimos homines, equites Romanos, summo splendore fuerit, ut postea princeps inter suos plurimarum rerum sanctissimus et iustissimus iudex, maximarum societatum auctor, plurimarum magister . . . (§32)

The father's reputation, Cicero says, ought to help the son, not to harm him. The argument then moves on in a predictable fashion. The elder Plancius did not say anything offensive; but if he did speak too freely, then what has become of the right of free speech to which a Roman *eques* is entitled (§33 *libertatem equitis Romani*; cf. 55 *multis etiam pater, optimus vir, nimium retinens equestris iuris et libertatis videtur*)? The argument rouses the indignation of the equestrian members of the jury and creates a sense of solidarity between the defence and the jury. We do not know the result of this trial, but the fact of its publication by Cicero would, as usual, imply an acquittal, and for a predominantly equestrian jury to acquit someone who was so patently one of their own would be unsurprising.

Finally, I turn to *Pro Rabirio Postumo*, a defence of C. Rabirius Postumus, an important equestrian financier and the son of another prominent *publicanus* (§3 *fuit . . . huius pater, C. Curtius, princeps ordinis equestris, fortissimus et maximus publicanus*). His trial was for *repetundae* (specifically, under the clause of the *lex Iulia* entitled *quo ea pecunia pervenerit*), and was an appendage to the successful prosecution of Gabinius in the same court and with the same line-up of prosecution, defence counsel, and jury; it took place between December 54 and January 53.²⁸ It was Rabirius who was the chief lender to Ptolemy XII Auletes, the king of Egypt; when Gabinius restored him to his throne in 55, the king appointed Rabirius as his *dioecetes* (chief royal treasurer), giving him free rein to exact from the king's unfortunate subjects the money which he owed him. Back in Rome, both Gabinius and Rabirius were prosecuted for political reasons by opponents of the triumvirs. It is very unclear whether Cicero succeeded in securing Rabirius' acquittal, but his publication of the speech does once again suggest a favourable outcome (the unsuccessful defence of Gabinius was not published).²⁹

Cicero's defence is primarily based on the supposition that Rabirius is not liable under the *lex Iulia*, and at §§8–19 he gives a series of arguments to this effect. Among these is his claim that the law applies only to senatorial magistrates—not to members of their entourages, and not to *equites*. In prosecuting Rabirius, therefore, the prosecution are seeking to establish a precedent which would serve to bring *equites* within the scope of the law: hence the present trial represents a dangerous attack on their rights (cf. his claim in *Pro Plancio* that their right of free speech was under attack). Cicero makes a direct address to the *equites* on the jury in which he states his special claim to their attention:

nunc vos, equites Romani, videte. scitis me ortum e vobis omnia semper sensisse pro vobis. nihil horum sine magna cura et summa caritate vestri ordinis loquor. alius alios homines et ordines, ego vos semper complexus sum. (§15)

²⁸ The trial is explained with clarity in the convenient new translation and commentary on the speech by M. Siani-Davies (Oxford, 2001).

²⁹ Siani-Davies (n. 28), 82–4 regards an acquittal as probable.

Having made common cause with the equestrian members of the jury, he then proceeds to warn them of the threat to their rights if they convict Rabirius—the danger that they could end up with the responsibilities of senators but none of the privileges (§18 *hoc vos, equites Romani, ius a patribus acceptum amittetis?*). The argument is precisely the same as that examined earlier in *Pro Cluentio* (§§143–60), although here the attitude adopted towards the senate is less confrontational than it was in the earlier speech.

If Cicero did indeed win his case, one can speculate as to the reason why. Badian writes in the *Oxford Classical Dictionary* that ‘Rabirius . . . was acquitted as a result of Cicero’s appealing to the sympathy of *equites* on the jury’, and Siani-Davies writes that ‘it may be supposed that the majority of the *equites* and *tribuni aerarii* voted on “class” lines and, thus, for acquittal’.³⁰ If Cicero were to have won this case because of his ability to win over the equestrian members of the jury, it would be entirely in character.

Let us review, then, what has been found in the second part of this paper. On each occasion when he appears before equestrian jurors, Cicero comes to the court with an advantage, his pre-existing ‘special relationship’ with their order: as we saw in the first part, the juries had good reason to be well disposed towards him. In his speeches he therefore does all he can to capitalize on that special relationship. First, he draws attention to it by identifying himself with the *equites* and reminding them whenever possible of his own equestrian origin. He gives them to understand that he is at heart one of them, and that he is their friend. Where he can, he identifies his client with them too, and in such a way as to isolate the opposition: he, his client, and the jury are in one camp, while the opposition are on their own in the other. If his client also has a pre-existing good relationship with the *equites*, then naturally he makes the most of that too. Secondly, he expresses strong support for the *equites* in all matters, and speaks out in defence of their rights and privileges. He voices strong approval of the *equites* of the past and present, and particularly for the equestrian juries of the pre-Sullan era. Thirdly, he goes out of his way to flatter the *equites*. He enlarges upon their *dignitas* and he treats them with a respect and a deference that seem on occasion to border on the religious.³¹ Finally and most importantly, he makes it clear to the jury that he wishes them to acknowledge their side of the special relationship by acquitting his client, and he shows them how it would be in their interest to do so.

So was it his support for the *equites*, then, that gave him his exceptional record of success? Obviously his oratorical ability was of the highest importance, and the outcome of particular trials would also be decided by such factors as the quality of the other speeches on both sides, the innocence or guilt of the accused, the personalities of those involved, and the prevailing political situation. But his special relationship with the *equites* was evidently a factor of great importance also. That relationship was too significant a feature of Cicero’s career for it not to have been, and his capitalization on the relationship in the speeches is prominent and pervasive enough to lead us to the same conclusion.

Cicero’s domination of the courts is always considered to date from his defeat of Hortensius in the Verres trial in 70. It is interesting to reflect that the date may be correct but the occasion wrong, and that Cicero’s domination may more truly have been secured by the *lex Aurelia*, which restored to the *equites* their judicial power.

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³⁰ E. Badian in *OCD*³, s.v. ‘Rabirius (*RE* 6) Postumus, Gaius’; Siani-Davies (n. 28), 84.

³¹ Cf. *Chu.* 195, where the jury are figuratively referred to as gods.